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Attorneys for Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF ARIZONA

In Re:

FARWEST PUMP COMPANY,

Debtor.

Chapter 11 Proceeding

Case No. 4:17-bk-11112-BMW

**RENEWED MOTION TO
CONVERT TO CHAPTER 7**

The Official Committee of Unsecured Creditors (the “Committee”), through undersigned counsel, pursuant to 11 U.S.C. §§ 105 and 1112, hereby renews its *Motion to Dismiss or Convert to Chapter 7* [DE 451] filed on March 8, 2019, and modifies it to request that the Court enter an order converting this case to a Chapter 7.

This Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

1. On September 20, 2017, the Debtor filed a voluntary petition for Chapter 11 relief.
2. On or about November 14, 2017, the Committee was formed.
3. On December 21, 2017, the Court entered an Order authorizing the Committee to employ undersigned counsel.
4. The Debtor filed a plan of reorganization on January 18, 2018, which was subsequently amended on March 21, 2018 and again on June 12, 2018.

1 5. On March 30, 2018, the Committee filed its plan of liquidation and disclosure
2 statement, and an amended disclosure statement on June 12, 2018.

3 6. A trial on the competing plans was held on May 2, May 8 and May 23, 2019, at
4 which testimony was taken.
5

6 7. The parties submitted post-trial briefs on June 6, 2019, and closing arguments
7 were held on June 12, 2019.

8 8. On October 17, 2019, the Court entered a Memorandum Decision Regarding
9 Plan Confirmation, and its Order Confirming the Committee's Plan.
10

11 9. On October 25, 2019, the Debtor appealed the Order Confirming the
12 Committee's Plan to the Bankruptcy Appellate Panel (the "BAP").

13 10. On November 26, 2019, the Committee renewed its previously-filed Motion for
14 Standing to recover fraudulent transfers and/or preference payments from the Debtor's related
15 entities.
16

17 11. At the January 16, 2020, on the Committee's Renewed Motion for Standing, the
18 Court granted the Motion with respect to fraudulent transfers and preferential payments.¹
19

20 12. On March 23, 2020, the Committee requested a hearing on its First Fee
21 Application, which the Debtor had objected to.
22

23
24

¹ After repeated attempts to secure Debtor's counsel's agreement to the language for a
25 proposed stipulated order, a Stipulated Order was entered on June 6, 2020, granting the
26 Committee standing to pursue fraudulent transfer claims against the Debtor's related entities,
27 and imposing protective measures on the Debtor to include filing periodic financial reports of
28 the Debtor's related entities. Despite repeated requests, the Debtor has not complied with the
Court's Order.

1 13. After a hearing held on May 13, 2020, at which counsel for the Committee
2 agreed to a 10% reduction in his fees, the Court entered an Order approving payment of the
3 reduced amount. Despite repeated requests, the Debtor has not complied with the Court's
4 Order.
5

6 14. On July 15, 2020, oral argument was heard before the BAP, and on September
7 18, 2020, the BAP entered its Memorandum Decision, affirming the Bankruptcy Court's order
8 denying confirmation of the Debtor's plan, vacating the order confirming the Committee's
9 plan, and remanding the case for further proceedings.
10

11 15. On August 12, 2020, the Committee filed an Application for Order to Show
12 Cause for the Debtor's failure to pay the Committee's First Fee Application as ordered on May
13 13, 2020.
14

15 16. On August 24, 2020, the Committee filed an Application for Order to Show
16 Cause for the Debtor's failure to file periodic financial reports as ordered on June 6, 2020.
17

18 17. A hearing was held on September 30, 2020, to consider the Committee's
19 applications for orders to show cause. At the hearing, Debtor's counsel advised that he would
20 have the Debtor pay the reduced fees pursuant to the First Fee Application and prepare
21 financial reports for the Debtor's related entities. Debtor's counsel also proposed that the
22 parties agree to participate in mediation.
23

24 18. At the September 30, 2020, hearing the Court set a continued hearing for October
25 21, 2020, and advised that it was inclined to convert the case to a Chapter 7 at the October 21
26 hearing.
27
28

1 19. As of the filing of this Renewed Motion, the Debtor continues to flaunt this
2 Court's orders. The Debtor has failed to pay undersigned counsel's attorney's fees and has
3 failed to file financial reports for its related entities as ordered.
4

5 **II. DISCUSSION**

6 For the sake of brevity, rather than re-arguing the Motion, the Committee hereby renews
7 and incorporates by reference all briefing on this matter, including its "Memorandum of Points
8 and Authorities," found in the original Motion to Dismiss and/or Convert to Chapter 7 at DE
9 451.²
10

11 Ultimately, the Committee believes that it is in the best interest of creditors and of the
12 Debtor's estate to convert this case to a Chapter 7. The Committee believes that cause exists
13 pursuant to the following Section 1112(b)(4) factors:
14

15 (A) That there has been and will continue to be a diminution of the estate's assets
16 and there is no reasonable likelihood of rehabilitation. First, the Debtor's Plan was denied and
17 all findings on the Debtor's Plan were upheld by the Bankruptcy Appellate Panel. Second, the
18 Debtor's equipment continues to depreciate like any other asset and without the related entities
19 providing any disclosure, we are in the dark as to the existence of many of the Debtor's assets.
20 Third, according to the Debtor's monthly operating reports, the Debtor's business has only
21 generated \$95,295.62 in net income since the filing of the petition. And finally, the Debtor
22 has outstanding receivables that have grown from \$122,066.90 at the petition date, to
23 \$373,299.13 according to the Debtor's last Monthly Operating Report.
24
25

26 ² The Committee also requests the Court taken into consideration its Memorandum Decision
27 Regarding Plan Confirmation [DE 614] and Order Confirming Committee's Plan [DE 615].
28

1 (B) That the estate has been grossly mismanaged, which has been shown by the
2 actions of the Debtor's principals, to include not following Court orders as demonstrated by
3 the Committee's two Applications for Orders to Show Cause at DE 765 and 768, and this
4 Court's findings pursuant to its Memorandum Decision Regarding Plan Confirmation;
5

6 (E) That the Debtor has failed to comply with orders of the Court as noted herein;
7 and
8

9 (F) That the Debtor has failed to timely file monthly operating reports and financial
10 reports for the related entities as ordered by the Court, as noted above.

11 **III. CONCLUSION**

12 For the reasons stated in the Committee's original Motion and the Renewed Motion,
13 the Committee respectfully requests the Court enter an order converting this case to a Chapter
14 7.
15

16 DATED this 15th day of October 2020.

17 **GERALD K. SMITH AND JOHN C. SMITH**
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27
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